

U.S. Department of Justice

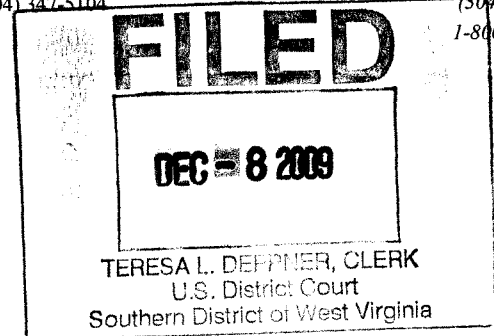
*United States Attorney
Southern District of West Virginia*

United States Courthouse
300 Virginia Street East
Charleston, WV 25301
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Charleston, WV 25326
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September 14, 2009

Robert P. Martin, Esquire
Bailey & Wyant PLLC
P.O. Box 3710
Charleston, WV 25337



Re: United States v. Albert Hendershot

Dear Mr. Martin:

This will confirm our conversations with regard to your client, Albert Hendershot (hereinafter "Mr. Hendershot"). As a result of these conversations, it is agreed by and between the United States and Mr. Hendershot as follows:

1. **CHARGING AGREEMENT.** Mr. Hendershot agrees to waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a one-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."

2. **RESOLUTION OF CHARGES.** Mr. Hendershot will plead guilty to a violation of 18 U.S.C. §§ 665(a) and 2 (Theft of Employment and Training Funds) as charged in said information.

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initials

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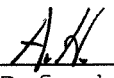
Re: Albert Hendershot

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Hendershot will be exposed by virtue of this guilty plea is as follows:

- (a) Imprisonment for a period of two years;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of 1 year;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) An order of restitution pursuant to 18 U.S.C. §§ 3663A and 3664, or as otherwise set forth in this plea agreement.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Hendershot will tender a check or money order to the Clerk of the United States District Court for \$100, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Hendershot will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Hendershot fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Hendershot.

5. **RESTITUTION.** Notwithstanding the offense of conviction, Mr. Hendershot agrees to pay such restitution as determined by the Court, with interest as allowed by law, to the fullest extent


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financially feasible. In aid of restitution, Mr. Hendershot further agrees as follows:

- (a) Mr. Hendershot agrees to fully assist the United States in identifying and locating any assets to be applied toward restitution and to give signed, sworn statements and testimony concerning assets upon request of the United States.
- (b) Mr. Hendershot fully complete and execute, under oath, a Financial Statement and a Release of Financial Information on forms supplied by the United States and will return these completed forms to counsel for the United States within seven calendar days from the date of the signing of this plea agreement.
- (c) Mr. Hendershot agrees not to dispose of, transfer or otherwise encumber any real or personal property which he currently owns or in which he holds an interest.
- (d) Mr. Hendershot agrees to fully cooperate with the United States in the liquidation of assets to be applied towards restitution, to execute any and all documents necessary to transfer title of any assets available to satisfy restitution, to release any and all right, title and interest he may have in and to such property, and waives her right to exemptions under the Federal Debt Collection Procedures Act upon levy against and the sale of any such property.
- (e) Mr. Hendershot agrees he will not appeal any order of the District Court imposing restitution.

6. **PAYMENT OF MONETARY PENALTIES.** Mr. Hendershot agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to



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immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Hendershot further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

7. **COOPERATION.** Mr. Hendershot will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Hendershot may have counsel present except when appearing before a grand jury.

8. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Hendershot, and except as expressly provided for in paragraph ten, nothing contained in any statement or testimony provided by Mr. Hendershot pursuant to this agreement, or any evidence developed therefrom, will be used against Mr. Hendershot, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

9. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Hendershot for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Hendershot for perjury or false statement if such a situation should occur pursuant to this agreement.

10. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Hendershot stipulate and agree that the facts comprising the offenses of conviction include the facts


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outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit B."

Mr. Hendershot agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by Mr. Hendershot, and he is subsequently tried on any of the charges in the information, the United States may use and introduce the "Stipulation of Facts" in the United States case-in-chief, in cross-examination of Mr. Hendershot or of any of his witnesses, or in rebuttal of any testimony introduced by Mr. Hendershot or on his behalf. Mr. Hendershot knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Hendershot understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

11. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Hendershot is aware that 18 U.S.C. § 3742 affords him the right to appeal the sentence imposed by the District Court. Nonetheless, Mr. Hendershot knowingly and voluntarily waives her right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is at or below the maximum prescribed by statute, as set forth in paragraph three above. The United States retains the right to appeal any sentence of imprisonment, fine or restitution on any ground whatsoever if the sentence is below the guideline range determined by the Court prior to any departure or variance.

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Mr. Hendershot also knowingly and voluntarily waives the right to challenge his guilty plea and his conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

12. WAIVER OF FOIA AND PRIVACY RIGHT. Mr. Henderson knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

13. FINAL DISPOSITION. The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Hendershot;

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- (f) Advise the Court concerning the nature and extent of Mr. Hendershot's cooperation; and
- (g) Address the Court regarding the issue of Mr. Hendershot's acceptance of responsibility.

14. **VOIDING OF AGREEMENT.** If either the United States or Mr. Hendershot violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

15. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Hendershot in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Hendershot in any Court other than the United States District Court for the Southern District of West Virginia.

Acknowledged and agreed to on behalf of the United States:

CHARLES T. MILLER
United States Attorney

By:

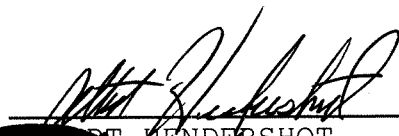
THOMAS C. RYAN
Assistant United States Attorney

TCR/slw

I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this eight-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

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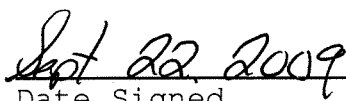
Re: Albert Hendershot



ALBERT HENDERSHOT
Defendant



ROBERT P. MARTIN
Counsel for Defendant



Date Signed



Date Signed

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initials

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO.

18 U.S.C. § 665(a)
18 U.S.C. § 2

ALBERT HENDERSHOT

I N F O R M A T I O N

The United States Attorney Charges:

(Embezzlement Of Employment and Training Funds)

1. At all relevant times, defendant ALBERT HENDERSHOT was an agent and employee of, and connected with an organization receiving financial assistance and funds under title I of the Workforce Investment Act of 1998.

2. From March 2008 until at least April 2009, defendant ALBERT HENDERSHOT, aided and abetted by others known and unknown to the United States Attorney, knowingly embezzled, willfully misapplied, stole, and obtained by fraud moneys, funds, assets, and property which were the subject of a contract pursuant to title I of the Workforce Investment Act of 1998, in an amount in excess of \$1,000, that is, defendant ALBERT HENDERSHOT diverted \$5,000 of a \$100,000 State Set-Aside grant to a person known to the United States Attorney (the "Known Person") notwithstanding that defendant

"PLEA AGREEMENT EXHIBIT A"

ALBERT HENDERSHOT knew that the Known Person provided no service for the payment.

In violation of Title 18, United States Code, Sections 665(a) and 2.

UNITED STATES OF AMERICA
CHARLES T. MILLER
United States Attorney

By: _____
THOMAS C. RYAN
Assistant United States Attorney

"PLEA AGREEMENT EXHIBIT A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

ALBERT HENDERSHOT

STIPULATION OF FACTS

The United States and Mr. Hendershot stipulate and agree that the facts comprising the offense of conviction include the following:

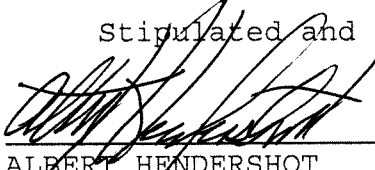
In March 2008, Albert Hendershot's Cross Lanes, West Virginia-based company, COMAR, Inc. ("COMAR") and its subsidiary, VEC³, LLC applied for a federal grant to receive workforce training funds from the United States Department of Labor pursuant to title I of the Workforce Investment Act of 1998 ("WIA"). WORKFORCE WV, a state agency, administers the WIA funds and makes all funding recommendations. On May 27, 2008, WORKFORCE WV awarded COMAR \$100,000 in workforce training funds for the fiscal year beginning on July 1, 2008.

Mr. Hendershot wanted to provide COMAR's Chief Technical Officer, Martin Bowling, a "bonus" from grant funds for helping secure the grant. To disguise the payment, Bowling created a false "Independent Contractor Agreement" with Mr. Hendershot's knowledge and submitted it to WORKFORCE WV. The agreement stated that COMAR intended to hire Mr. Bowling's girlfriend Mandi Felty to perform "a needs assessment study on West Virginia based small businesses and internet marketing."

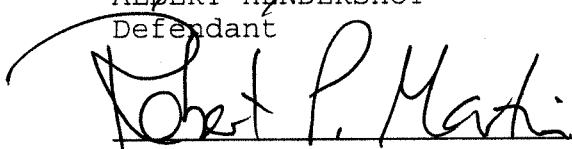
On July 21, 2008, WORKFORCE WV approved COMAR's draw-down to pay Ms. Felty for the services referenced in the Independent Contractor Agreement. The next day, Mr. Hendershot in turn signed a \$5,000 check to Felty, which she and Mr. Bowling deposited into a joint account. Felty never performed any service as set forth in the WIA grant proposal or the Independent Contractor Agreement. Hendershot knew that Felty did not perform any service for the \$5,000 payment.

This Statement of Facts does not contain each and every fact known to Mr. Hendershot and to the United States concerning his involvement and the involvement of others in the charges set forth in the Indictment, and is set forth for the limited purpose of establishing a factual basis for Mr. Hendershot's guilty plea.


Stipulated and agreed to:


ALBERT HENDERSHOT
Defendant

Oct 27, 2009
Date


ROBERT P. MARTIN
Counsel for Defendant

Oct. 27, 2009
Date


THOMAS C. RYAN
Assistant United States Attorney

10/27/09
Date

"PLEA AGREEMENT EXHIBIT B"